

The complaint

Ms A's complaint is that OneSavings Bank Plc trading as Kent Reliance (and referred to here as KR) has refused to remove her name from a mortgage account which is in the joint names of Ms A and her ex-husband, Mr B. Ms A is also unhappy that, rather than taking steps to repossess the property, KR has entered into a payment arrangement with Mr B.

To settle the complaint Ms A wants KR to remove her name from the mortgage account.

What happened

This complaint arises out of unhappy circumstances – the breakdown of the marriage between Ms A and Mr B. They'd taken out a joint mortgage in 2008 with a lender which later transferred the mortgage to KR. Ms A and Mr B borrowed £115,000 on an interest-only basis over a term of 30 years, with the mortgage term due to expire in 2038.

In 2018 Ms A left the property and has not lived there since. She and Mr B are now divorced.

Since 2018 Ms A has asked KR several times to remove her from the mortgage account. However, KR has declined to do this for several reasons, primarily mortgage arrears and the loan-to-value ratio (LTV) on the property exceeding 100%. Ms A's argument is that she doesn't live at the property, and isn't responsible for the arrears that have accrued. However, KR's position is that the mortgage is a joint and several liability, and because of the arrears it's unable to remove Ms A from the mortgage.

In 2022 a suspended possession order was made. Ms A is also unhappy that KR has since entered into a payment arrangement with Mr B, rather than taking possession of the property.

KR didn't uphold the complaint so Ms A raised it with our service. An Investigator looked at what had happened. Whilst he was sympathetic to Ms A's circumstances, he explained that KR wasn't under any obligation either to release her from the mortgage contract or to take action to repossess the property.

Ms A disagreed and asked for an Ombudsman to review the complaint. She said that the mortgage wasn't in arrears when she left in 2018, and thinks it's unfair that she's in this position through no fault of her own.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having considered the available evidence, I'm afraid I have disappointing news for Ms A; I'm not upholding the complaint. These are my reasons.

Transfer of equity: I fully understand why Ms A would like to be released from the mortgage contract, given that she hasn't lived in the property for six years and so believes she's not responsible for the mortgage falling into arrears. I can see that from late 2018 onwards (after I am told Ms A left the property and presumably ceased contributing towards the mortgage) the account started to fall in and out of arrears, sometimes catching up but then falling behind again.

Mr B isn't a party to this complaint, so I don't have any information from him about why the mortgage fell into arrears. However, the start of the arrears appears to have coincided with him becoming solely responsible for paying the mortgage.

KR's criteria transfer of equity can only be made in certain circumstances:

- the party who wants the property and mortgage transferred into their sole name requests it;
- the property has been free of arrears for at least 12 months;
- the lender is satisfied that the applicant meets its lending, LTV and affordability criteria for a mortgage in their sole name.

KR has explained that the account doesn't meet the criteria to release Ms A from the mortgage. That's a decision KR is entitled to make, based on its lending criteria.

But in any event, there is no evidence that Mr B has applied for a transfer of equity and been turned down. I don't have his consent to obtain any information about his dealings with KR, so I can't say whether he has, or has not, made such an application. But from what Ms A told KR in 2021, Mr B was unco-operative with her request for her to be removed from the mortgage.

In any event, as a joint borrower Mr B has equal rights in relation to this mortgage, and as noted above, he's not a party to this complaint. I don't know whether he wants the mortgage in his sole name or not. Therefore, even if I were satisfied that he met KR's lending criteria (and I have no information about his circumstances to make such a decision), I couldn't order KR to remove Ms A from the mortgage account unless Mr B had made an application for a transfer of equity of the mortgage into his sole name and he met KR's lending criteria.

In the circumstances, whilst I acknowledge how frustrating it is for Ms A to still be a party to this mortgage, I'm not persuaded KR is under any obligation to release her from the mortgage contract.

Repossession: A suspended possession order was made by the court in 2022. The court was satisfied that the arrears (then about £1,700) could be paid off over a reasonable period of time, and made the order accordingly. That's a matter for the court to decide and I have no power to interfere with that. This is not an informal arrangement between Mr B and KR. It is a court order which is binding on Ms A and Mr B and KR.

Where the court has made a suspended order and the borrower is keeping to the terms of suspension, the lender can take no further action to repossess the property. Therefore, even though Ms A would like KR to repossess the property, KR has no power to do so while the terms of the suspended order are being adhered to.

If Ms A is unhappy about this, she'll need to make an application to the court which granted the possession order asking the court to order that the terms of suspension be lifted and for repossession to go ahead. Ms A might want to take legal advice if she is intending to do this, as it is, in my opinion, unlikely a court would agree to this.

Conclusion

I fully acknowledge that Ms A is in a difficult position, as she is tied into a mortgage that has 14 years left to run on its term, at the end of which there will be a capital balance outstanding (because this is an interest-only mortgage). However, after careful consideration of all the evidence, I'm unable to find that KR has done anything wrong.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 19 December 2024.

Jan O'Leary
Ombudsman